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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,318	10/20/2003	Richard E. Stamper	15268-0008	4137

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Intellectual Property Group
Bose McKinney & Evans LLP
2700 First Indiana Plaza
135 North Pennsylvania Street
Indianapolis, IN 46204

EXAMINER

WIEKER, AMANDA FLYNN

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/689,318	Applicant(s) STAMPER ET AL.	
	Examiner Amanda F. Wieker	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 15-17 is/are rejected.
- 7) ☒ Claim(s) 12-14 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because the language "are provided" in line 1 can be inferred from the abstract and should be avoided. Correction is required. See MPEP § 608.01(b).
2. The amendment filed on 31 March 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the "key" and "keyway" disclosed in claim 15.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 15 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification, claims or drawings as originally filed did not disclose a "key" or "keyway" as claimed in newly added claim 15. Such new matter should be cancelled from the claims.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 3,099,441 to Ries.

Ries discloses an apparatus for restricting movement of a patient's head, the apparatus comprising: a frame (14, 15, 16, 17, 30), and a plurality of constraints (11, 12, 13) engaged with the frame to constrain the patient's head (10) relative to the frame, wherein the plurality of constraints includes a first constraint (either of 12, 13) including an axis oriented generally radial to the patient's head, the first constraint configured to permit at least four degrees of motion (12 and 13 each permit exactly five degrees of motion; three rotational degrees, in addition to 'up/down' and 'left/right' as allowed by pivot 33) of the patient's head relative to the frame, a first degree of motion of the at least four degrees of motion generally permitting linear motion transverse to the axis of the first constraint, wherein such motion is generally perpendicular to the axis of the first constraint.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 2, 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ries in view of U.S. Patent Number 6,179,846 to McFadden.

Ries discloses the previously described apparatus for restricting movement of a patient's head, wherein the apparatus includes three constraints engaged with the frame to constrain the patient's head, two of which (12, 13) have five degrees of motion and one of which (11) has three degrees of motion (rotational). However, according to the criteria set forth in Applicant's specification, this does not "exactly constrain" the patient's head relative to the frame.

McFadden discloses an apparatus for restricting movement of a patient's head, and teaches the use of an additional constraint on the pivoting side of the head, in order to improve stability of the apparatus (see Figure 1, and column 3, lines 29-33).

It would have been obvious to one skilled in the art at the time the invention was made to have provided the apparatus disclosed by Reis with an additional constraint on the pivoting side, as taught by McFadden, to provide more stability to the apparatus, thus yielding a device with three constraints having five degrees of motion each, and one constraint with three degrees of motion, resulting in an apparatus that "exactly constrains" the head, as defined by Applicant.

9. Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ries in view of U.S. Patent Number 5,203,765 to Friddle, Jr.

Ries discloses the previously described apparatus for restricting movement of a patient's head, wherein the apparatus includes three constraints engaged with the frame to constrain the patient's head, two of which (12, 13) have five degrees of motion and one of which (11) has

three degrees of motion (rotational). Ries discloses that the frame is secured to the patient's head to keep it immobile during surgery.

Friddle, Jr. discloses an apparatus for restricting movement of a patient's head, wherein the apparatus includes a plurality of constraints (14) engaged with a frame (12) to constrain the patient's head. Friddle, Jr. specifies that the frame be supported by a support structure (36), wherein the support structure includes a vest (18) worn by the patient to provide relative support between the head and torso of the patient.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the apparatus disclosed by Ries wherein the frame is supported by a support structure including a vest, as taught by Friddle, Jr., to provide relative support between the head and torso of the patient.

10. Claims 6, 8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ries in view of McFadden in further view of U.S. Patent Number 5,203,765 to Friddle, Jr.

Ries in view of McFadden disclose the previously described apparatus for restricting movement of a patient's head, comprising three constraints having five degrees of motion each, and one constraint with three degrees of motion, resulting in an apparatus that "exactly constrains" the head. Ries discloses that the frame is secured to the patient's head to keep it immobile during surgery.

Friddle, Jr. discloses an apparatus for restricting movement of a patient's head, wherein the apparatus includes a plurality of constraints (14) engaged with a frame (12) to constrain the patient's head. Friddle, Jr. specifies that the frame be supported by a support structure (36), wherein the support structure includes a vest (18) worn by the patient to provide relative support between the head and torso of the patient.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the apparatus disclosed by Ries in view of McFadden, wherein the frame is supported by a support structure including a vest, as taught by Friddle, Jr., to provide relative support between the head and torso of the patient.

Allowable Subject Matter

11. Claims 12-14 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

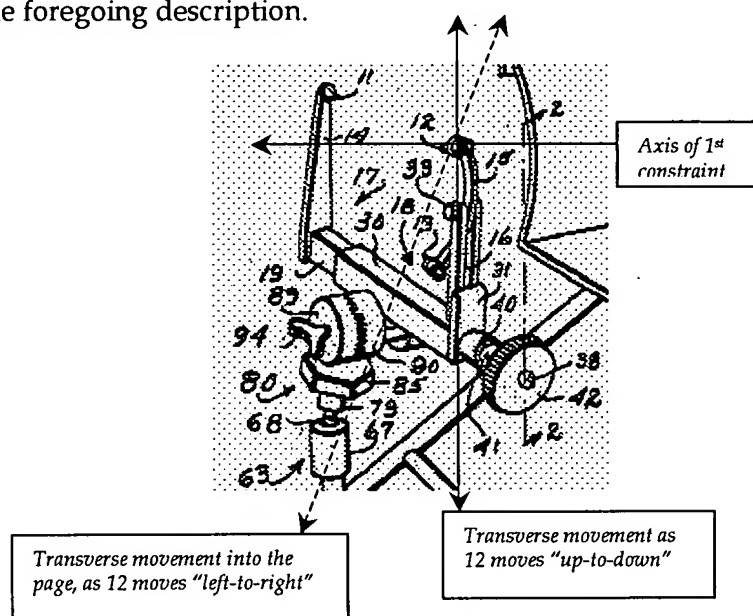
12. Applicant's arguments filed on 31 March 2005 have been fully considered but they are not persuasive.

On page 4 of the Remarks, Applicant argues that Ries does not disclose a first constraint configured to permit at least four degrees of motion, wherein the first degree of motion permits motion transverse to the axis of the first constraint.

The examiner disagrees. The first constraint can be considered to be either of constraint 12 or 13, though for this discussion reference number 12 will be considered as the first constraint. The axis of constraint 12 extends left to right in Figure 1. Movement transverse to that axis would extend either into the paper as the constraint moves left-to-right, or up-and-down, with respect to Figure 1. The system disclosed by Ries allows movement of the first constraint along both of these axes, transverse to the axis of 12. As constraint 12 pivots about point 33 the constraint moves both up-and-down (i.e., from the top of the page to the bottom of the page) and left-to-right (into and out of the page). Both of these motions occur transverse to the axis of the constraint itself. Movement "along the axis" of 12, or "parallel to the axis" would

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be affected only by movement of the constraint 12 toward constraint 11. Therefore, the examiner disagrees with Applicant's position, and maintains that Ries discloses motion transverse to the axis of the first (12) constraint. The examiner has provided the following marked-up version of Figure 1, to aid in the foregoing description.



Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda F. Wieker whose telephone number is 571-272-4794.

The examiner can normally be reached on Monday-Thursday, 7:30 - 5:00 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Amanda F. Wieker
Examiner
Art Unit 3743

afw


Henry Bennett
Supervisory Patent Examiner
Group 3700